ARDEN SHIPPING LTD.

v.

OWNERS OF THE VESSEL "SUNGEI BULAN"

HIGH COURT, SINGAPORE
AP RAJAH J
[MOTION IN ADMIRALTY IN REM NO. 320 OF 1983]
10 AUGUST 1983

SHIPPING: *Agreement for reconstruction and sale of ship - Charter party - Whether part of agreement action by mortgagee - Whether should be stayed - Whether arbitration clause in charterparty should be enforced.*

ARBITRATION: *Agreement - Whether arbitration clause binding.*

By an agreement ("the agreement") for the reconstruction and sale of ship, the plaintiffs agreed to buy the vessel after they had rebuilt it. In order to secure their position, the plaintiffs obtained a mortgage over the ship. A charter existing between the defendants and Spie Offshore S.A. provided for settlement of disputes by arbitration. The charterers gave notice to the defendants of cancellation of the charter. The plaintiffs commenced an action against the defendants as mortgagors under a registered first preferred mortgage. They contended that one way or another they were entitled to treat the agreement as terminated.

Held:

[1] The charterparty was an integral part of the agreement and should be read together with it.

[2] The action by the plaintiffs had been brought in breach of the arbitration clauses in the charterparty and must be stayed. The test in such cases has been said to be whether the contract is determined by something outside itself, in which case the arbitration clause is determined with it, or by something arising out of the contract, in which the arbitration clause remains effective and can be enforced.

[3] Action was ordered to be stayed for one month, during which period the defendants were to commence arbitration proceedings.

Other source referred to:
Russell on Arbitration 19th Edn. p. 176

For the plaintiffs - K.S. Lo
For the defendants - Emmanuel (Allan Thambyah with him)
For the interveners - Lee Mun Hooi

JUDGMENT

AP Rajah J:

The plaintiffs, a company organised and existing under the laws of the Republic of Liberia and having its registered office at Liberia, Monravia, commenced the action herein on the 22 April, 1983 claiming against the jack-up barge "Sungei Bulan" the sum of US$6.8 million together with interest as mortgagors under a registered First Preferred Mortgage dated **24 February 1983.** The owners of the "Sungei Bulan" are Land and Sea Construction Services Pte. Limited, a company incorporated in Singapore and having its registered office at 17A Pandan Road, Singapore. The vessel was arrested on 25 April 1983. The affidavit of Max Mazel sworn to and filed on 9 June 1983 sets out the salient points.

By an agreement for the Reconstruction and Sale of the "Sungei Bulan" (the Agreement) dated **17 December 1982** and made between the plaintiffs and the defendants, the plaintiffs agreed to rebuild, complete, carry out trials and deliver to the defendants and the plaintiffs agreed to purchase and take from the defendants, the "Sungei Bulan" at the price, in the manner and upon the terms therein provided. In effect the plaintiff's agreed to buy the rebuilt vessel paying for it by instalments, which instalment were used by the defendants to fund works done on the vessel. In order to secure their position, the plaintiffs obtained the said mortgage over the barge. An integral part of the Agreement is a charterparty dated **30 November 1982** (the Charterparty) made between the defendants and Spie Offshore S.A. (the Charterers), a company with limited liability incorporated under the laws of France and whose registered office is 33 Quai de Dion Bouton, 92814 Puteaux Cedex, France.

In the events which happened the charterers gave notice to the defendants it was cancelling the charter and **the plaintiffs contended that, one way or another, the defendants were in breach of the Agreement** and/or the plaintiffs were entitled to treat the Agreement as terminated under its express provisions. The Plaintiffs further contended that an event of default had occurred under Clause 10 of the said mortgage.

On 23 May 1983 the Chartered Bank of Singapore obtained leave of the Court to intervene in this action as debenture holders of the "Sungei Bulan" and now appear as interveners in the action.

Two motions came up before me for hearing on 20 June 1983, one moved by the plaintiffs and the other by the defendants. The plaintiffs in the usual way prayed for an order for the appraisement and sale of the arrested vessel "SUNGEI BULAN" whereas the defendants prayed that all further proceedings in this action be stayed.

A number of affidavits were filed before these two motions came on for hearing. The defendants' contention was that the Agreement and the Charterparty should be read together and that on such a reading there ought to be a stay of proceedings on the ground that the dispute herein should be referred to arbitration.

Clause 25 of the Charterparty, which is the first in time, reads as follows:

> This Charter Party shall be read and construed in accordance with the Laws of England.
>
> All disputes arising under this Charter Party shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance thereof and shall take place in London, England.
>
> The reference of any dispute to arbitration under this Charter Party and the currency of arbitration proceedings shall not of itself relieve the parties of their obligations and liabilities under or pursuant to this Charter Party.

Article 17 of the Agreement states "Arbitration as per charterparty. Governing law as per charter party."

It should be further noted that recitals (C), (D) and (E) of the said First Preferred Ship Mortgage, which is the last in time, reads as follows:

> (C) By an agreement for the reconstruction and sale of the Barge ("the Agreement") dated 17th December, 1982 and made between the Owner and the Mortgagee an unexecuted copy of which is attached hereto as Exhibit A and made a part hereof, the Owner agreed to rebuild, complete, carry out trials and deliver to the Mortgagee and the Mortgagee agreed to purchase and take from the Owner, at the price, in the manner and upon the terms therein provided, the Barge.

(D) It was a condition (among others) of the Mortgagee entering into the Agreement that the Owner should secure to the Mortgagee the payment of all sums due or to become due to the Mortgagee under the Agreement (the "Indebtedness") by granting to the Mortgagee a first preferred mortgage on the Barge.

(E) In order therefore to secure to the Mortgagee the due performance of and compliance with by the Owner of all the covenants, terms, conditions and obligations on the part of the Owner contained in the Agreement and this Mortgage the Owner has duly authorised the execution and delivery of this Mortgage under and pursuant to the code of Commerce of Panama.

It was the submission of the defendants that the basic dispute herein that led to the arrest of the vessel in Singapore arose primarily under the Agreement into which the Charterparty had been integrated and that the action herein has been brought in breach of the arbitration clauses therein. In reply Counsel for the plaintiffs relied on Articles 10.4 and 11.4 of the Agreement. These articles relate to cancellation of the Agreement by the plaintiffs in case of delays in delivery or non-delivery of the said barge to the plaintiffs. To my mind these two articles are no reply to the defendants' submission. "The test in such cases has been said to be whether the contract is determined by something outside itself, in which case the arbitration is determined with it, or by something arising out of the contract, in which case the arbitration clause remains effective and can be enforced." (page 176 of *Russell on Arbitration* (19th Edn.).

I agreed with the defendants' submission and ordered that the action be stayed for a month, during which the defendants were to commence arbitration proceedings in London. The parties were given liberty to apply.

Also found at [1984] 1 CLJ 55